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EXAMINER

CHACKO DAVIS, DABORAH

ART UNIT

PAPER NUMBER

1722

NOTIFICATION DATE

DELIVERY MODE

04/01/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 3, 5-11, 14-19, and 21-26, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1, at lines 4-5, and claim 21, at lines 4-5, recite the following,

exposing a first area of the resist film to form a resist pattern including an opening in the first area of the resist film;

exposing a first area of the resist film to form a resist pattern including an opening in the first area of the resist film;

The specification does not support this limitation. The specification teaches that the resist film is exposed selectively and developed to form an opening i.e., form a resist pattern with an opening. The specification also teaches that the resist film can be exposed to radiation and etched to form the resist pattern. It is not clear how a mere exposure results in the formation of an opening in the exposed area (the claimed first area). The instant claims do not recite that the resist film is subjected to an ablation in the first area to form an opening and the instant specification does not teach ablation.

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The resist film, in any photolithographic exposure, when exposed selectively to radiation (UV, EUV etc) results in the exposed portions either deteriorating (for positive resist) or curing for negative resist, and the exposed resist film is then subjected to developing in a suitable developer so as to remove exposed portions of the resist film for positive resist film to form the opening or remove unexposed portions of the negative resist film to form the opening. The claims as recited do not recite a developing and/or an etching step and does not enable one skilled in the art how an opening is formed in the resist film. Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 3, 5-11, 14-19, 21-26, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 7,416,837 (Nozaki et al.) Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim forming resist

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pattern with smoothed or reduced edge roughness using the same method steps include applying a smoothing or resist pattern improving material to the resist pattern, heating and developing.

Response to Arguments

5. Applicant's amendment and arguments, filed on January 7, 2011, with respect to the 35 U.S.C. 103(a) rejections of claims 1, 3, 5-11, 14-19, and 21-26, have been considered but are moot in view of the new ground(s) of rejection. The Double Patenting rejection of claims 1,3,5-11,14-19, and 21-26, are maintained. See Terminal Disclaimer Review decision mailed 03/17/2011. Upon clarification of the subject matter in claims 1, and 21, or removal of the newly added subject matter in claims 1, and 21, the rejections made in the previous office action (mailed October 12, 2010), of claims 1,3,5-11,14-19, and 21-26, will be reinstated.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daborah Chacko-Davis whose telephone number is (571) 272-1380. The examiner can normally be reached on M-F 9:30 - 6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly can be reached on (571) 272-1526. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent

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/DABORAH CHACKO-DAVIS/
Primary Examiner, Art Unit 1722

March 24, 2011.